JOHN C. HETER

IBLA 95-374 Decided March 9, 1998

Appeal from a decision by the California State Office, Bureau of Land Management, finding mining claims null and void ab initio. CAMC 263242 through CAMC 263251.

Affirmed.

1. Mining Claims: Lands Subject to--Withdrawals and Reservations: Effect of

Mining claims located on land segregated from entry under the mining laws are properly declared null and void ab initio.

2. Administrative Authority: Laches--Estoppel--Laches

The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by laches, neglect of duty, failure to act, or delays in the performance of duties.

APPEARANCES: John C. Heter, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

John C. Heter has appealed from a March 6, 1995, Decision of the California State Office, Bureau of Land Management (BLM) declaring placer mining claims Gordon No. 1 through Gordon No. 10 (CAMC 263242 through CAMC 263251) null and void ab initio, or without legal effect from the beginning. The claims were located on April 21, 1994, and location notices were filed with BLM on June 9, 1994. Heter's location notices reveal that all claims except the Gordon No. 1 and Gordon No. 2 are located in sec. 27, T. 7 N., R. 4 W., San Bernardino Meridian (SBM). The Gordon No. 1 and Gordon No. 2 are located in sec. 34.

In its Decision, BLM declared the claims null and void ab initio because

[t]he official records of this office show that all of secs. 27 and 34, T. 7 N., R. 4 W., among other lands, have been determined to be suitable for disposal by exchange (serial number

> CACA 31899, as published in the Federal Register Vol. 58, No. 196, pages 31748-31750, June 4, 1993).

The Decision noted that "[l]ands suitable for disposal by exchange are segregated from the operation of the general mining law for a period of two years from the date of publication in the Federal Register," and concluded that the lands that Heter claimed were "closed to the location and entry of mining claims on June 4, 1993, and remained closed through the date of attempted location, April 21, 1994, until June 4, 1995." Accordingly, BLM declared the claims "null and void ab initio."

[1] As an initial matter, we note that it is well established that a mining claim located on land closed to entry under the mining laws confers no rights on the locator and is properly declared null and void ab initio. See, e.g., Jesse R. Collins, 139 IBLA 392 (1997); Lucian B. Vandegrift, 137 IBLA 308 (1997); Merrill G. Memmott, 100 IBLA 44 (1987). Our review of the record clearly establishes that the land embraced by Heter's mining claims was not open to mineral entry as of the date of his location of the claims. On June 6, 1991, and June 4, 1993, BLM issued notices of realty action (NORA's) affecting the lands on which Heter has attempted to locate these claims. In both NORA's, BLM proposed to exchange public lands with private lands in furtherance of more efficient management of the public land through elimination of "checkerboard ownership" in the Western Mojave Land Tenure Adjustment Project Area. See CACA 31899, 58 Fed. Reg. 31748 (June 4, 1993); CACA 28461, 56 Fed. Reg. 26137 (June 6, 1991). Both NORA's segregated secs. 27 and 34, T. 7 N., R. 4 W., SBM, from appropriation under the mining laws, subject to valid existing rights.

Heter asserts that his mining claims are commercially viable for muscovite, which is used in the manufacture of "asphalt tile, pipe and wire coating, paint, insecticides, phonograph records and plastic." (Statement of Reasons (SOR) at 2.) He states that the site has been "a long term mining property with extensive surface disturbance," and suggests that the lands were not appropriately selected for exchange. (SOR at 2.) The NORA allowed public comments to be submitted to the Barstow Resource Area, BLM, for a period of 45 days following publication. 58 Fed. Reg. 31750 (June 4, 1993). The record in this case does not indicate whether Appellant commented on the land exchange proposal; nor does it reveal the outcome of the exchange proposal. It is clear, however, that even if BLM excluded the lands described by Appellant from any exchange, such action would not operate retroactively to validate the locations made while the lands were segregated from mineral entry. See Harold E. De Roux, 94 IBLA 350 (1986).

Heter requests the Board to reverse BLM's Decision because the claims are located in the same area as "preexisting claims," which have been "mined sporadically" since 1912. He states:

> The land on which the Gordon claims are located was originally part of Silicate #1, CAMC 42251 and Silicate #3 CAMC 42252, both Association placer claims initially located in 1912. Ownership of the two association claims remained with the Gordon

> family over the years. Proof of Labor was last recorded on September 22, 1993 #0406398. These claims and upkeep of annual proof of labor pre-date any plans for disposal by exchange allowing the claims to remain under the stipulation of the Mining Laws.

(SOR at 1.) Although his claims may be configured differently from the preexisting claims, Heter maintains that their boundaries do not extend outside the area previously mined.

The subject claims are null and void if their validity depends on a 1994 location because the June 4, 1993, NORA segregated the land from mineral entry for a period of 2 years, or until early June 1995. Heter claims, however, that his claims are located over preexisting claims from which they derive their validity.

That mining claims are located on previously mined land, however, does not establish that they relate back to an earlier location. To establish that a location of a mining claim made after a withdrawal is actually an amendment of a prior location made before the withdrawal, a claimant must show the earlier location included the portion of the claim subject to the withdrawal, that the person making the amended location had an unbroken chain of title from the original locators, and that the location predating the withdrawal was properly made. See Steven A. Beld, 136 IBLA 142 (1996); Patsy A. Brings, 119 IBLA 319 (1991).

Heter makes no claim of ownership of the prior claims; in fact, he concedes that they were in the ownership of "the Gordon family." Moreover, he makes no claim that there is an unbroken chain of title from the earlier locators. Heter has not shown that his claims are an amendment of an earlier valid location.

[2] Finally, Heter maintains that, in furtherance of mining activity, he submitted a notice of intent to conduct mining, a biological survey, and a cultural resource survey to the Barstow Resource Area Office. Heter states that "[i]n a letter dated October 26, 1994, approval to mine was made with certain stipulations." We note that review of a notice of intent to mine pursuant to the surface management regulations at 43 C.F.R. Subpart 3809 does not constitute an adjudication of the validity of the mining claim. Rather, the purpose of these regulations is to ensure that mining activities do not cause unnecessary or undue degradation of the public resources. See 43 C.F.R. §§ 3809.0-1, 3809.0-2. While it is unfortunate that BLM did not advise Heter of the location problem with these claims sooner, we must point out that the applicable regulation expressly advises claimants that

> [f]ailure of the government to notify an owner upon his filing or recordation of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise

> void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

43 C.F.R. § 3833.5(f); see generally Washington Prospectors Mining Association, 136 IBLA 128 (1996).

As an additional matter, estoppel will not lie here because all mineral claimants are properly charged with constructive knowledge of the Federal Register notice segregating the lands from entry under the mining laws. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384-85 (1947); James A. Becker, 138 IBLA 347 (1997). Thus, an essential predicate of the invocation of estoppel, i.e., that the claimants did not know the true facts, cannot be established in this appeal. See United States v. Georgia Pacific Co., 421 F.2d 92 (9th Cir. 1970); John Plutt, Jr., 53 IBLA 313, 319 (1981).

Finally, since the invocation of the defense of laches or estoppel in this case would result in the grant of a right not authorized by law (the location of mining claims on land not open to mineral entry), it cannot be permitted. See, e.g., Ptarmigan Co., 91 IBLA 113 (1986), aff'd sub nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991).

Since the land on which the subject mining claims were located was clearly segregated from mineral entry by published notice at the time of location, BLM properly declared these mining claims null and void ab initio.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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C. Randall Grant, Jr.
Administrative Judge

I concur:

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James P. Terry
Administrative Judge